

DEFENSE ARTICLES AND SERVICES

Ex-Im Bank is prohibited by law, with limited exceptions, from financing defense articles and defense services. In defining what is a "defense article" or "defense service," the Bank uses criteria based on the identity of the end-user, the nature of the item, and the use to which it will be put. Limited exceptions may be made for humanitarian items and for small marine vessels and aircraft for coast guard/border patrol and drug interdiction purposes, even though these items are sold to military organizations. The Anti-Drug Abuse Act of 1988, as amended, grants a limited exception, under specific statutory conditions, to allow Ex-Im Bank assistance in financing the sale of defense articles and services. P.L. 103-428 enacted in October, 1994 gives authority to the Bank to provide financing for the export of nonlethal defense articles and services, the primary end use of which will be civilian.

Ex-Im Bank's Board of Directors has delegated to the Bank's Engineering and Environment Division (E&E) the authority to review transactions with military sales potential to determine whether prohibited defense articles or services are involved. The criteria used in the E&E review can be summarized as follows:

1. If the item(s) are sold to a military organization, they are considered to be defense articles until proven otherwise.
2. If the item is designed primarily for military use, it is presumed to be a defense article.
3. If the item has dual use, it is financeable if the investigation yields convincing evidence that the item is nonlethal in nature and will be used primarily for civilian activities, and the buyer or user provides a certificate to that effect. Specifically, the investigation must indicate that (a) the user has a legitimate civilian requirement which the dual-use item will indeed meet, (b) the primary motivation for the purchase appears to be the civilian requirement, and (c) the primary use for the product by the intended customer will be civilian in nature. The Bank will monitor the actual use of financed items and take appropriate action with respect to the financing and principals involved if the intended use has been misrepresented.
4. "Humanitarian" items are those related to lifesaving, health, and medical purposes. Examples would be hospital equipment, medical laboratory equipment, ambulances, fire engines, and rescue aircraft. These are not considered defense articles even if sold to military buyers.
5. Small scale aircraft and marine vessels used for drug interdiction, safeguarding natural resources, and providing lifesaving services to international shipping may also be financed even though sold to military entities and used primarily for routine patrol activities.

If additional guidance is required concerning defense articles and services eligibility on a specific Ex-Im Bank application, contact the Engineering & Environment Division at (202) 565-3570.

MORE INFORMATION

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